

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PATRICIA A. LUDWIG,

Plaintiff-Appellant,

v

STEVEN H. BENEFIELD, KAREN A.  
BENEFIELD, and MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,

Defendants-Appellees.

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UNPUBLISHED  
September 9, 2014

No. 314574  
Macomb Circuit Court  
LC No. 2012-003370-CH

Before: RIORDAN, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendants' motion for summary disposition in this quiet title action. We affirm.

**I. FACTUAL BACKGROUND**

Plaintiff and defendants are neighbors in Clinton Township, Michigan, with plaintiff's property lying to the east of defendants'. Defendants purchased their land in 1996 from Nancy Peuterbaugh and her now-deceased husband. Before the purchase, plaintiff and the Peuterbaughs installed separate sets of sprinkler heads west of plaintiff's property and on the east side of the Peuterbaugh property.

Defendants and plaintiff had a contentious relationship. Thus, defendants eventually sought to erect a fence between the properties. They commissioned a professional surveyor to survey the property, which revealed that plaintiff's sprinkler heads were on defendants' property. Defendants apparently offered to remove plaintiff's sprinkler heads at their own expense, but plaintiff declined.

Instead, plaintiff filed a complaint in the instant case, alleging that she owned the disputed 2.54-foot portion of land through adverse possession and acquiescence. She further asserted counts for trespass, nuisance, quiet title, and injunctive relief. In support of her claims, plaintiff claimed that she possessed and maintained the land openly and exclusively, and that she and the Peuterbaughs agreed to change the boundary line.

Defendants, however, filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). They argued, *inter alia*, that plaintiff's claims were barred by the statute of limitation and that there was no dispute about her exclusive and hostile use of the land because she failed to dispute that the Peuterbaughs and defendants also maintained the land. Defendants attached the affidavit of Nancy Peuterbaugh, who denied agreeing to change the property line, and the affidavit of defendant Steven Benefield, who claimed that he mowed and maintained the disputed land. Defendants also attached a drawn map of the disputed area, which showed that the parties' sprinkler heads were overlapping and did not form a straight line.

The court ultimately agreed with defendants, granting their motion for summary disposition. While plaintiff moved for reconsideration, the trial court denied the motion. Plaintiff now appeals on several grounds.

## II. SUMMARY DISPOSITION

### A. STANDARD OF REVIEW

We review *de novo* a grant or denial of a motion for summary disposition under MCR 2.116(C)(10). *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). The motion for summary disposition “tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Id.* “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers “affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (quotations marks and citations omitted).<sup>1</sup>

### B. ANALYSIS

Plaintiff contends that conflicting affidavits created a genuine issue of material fact regarding her exclusive use and maintenance of the disputed land. She asserts that summary disposition is improper. We disagree.

“To establish adverse possession, the party claiming it must show clear and cogent proof of possession that is actual, visible, open, notorious, exclusive, continuous and uninterrupted for the statutory period of 15 years, hostile and under cover of claim of right.” *Beach v Twp of*

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<sup>1</sup> To the extent that plaintiff altered her theory of acquiescence in her motion for reconsideration, “[w]here an issue is first presented in a motion for reconsideration, it is not properly preserved.” *Vushaj v Farm Bureau Gen Ins Co of Michigan*, 284 Mich App 513, 519; 773 NW2d 758 (2009). We review unpreserved claims for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

*Lima*, 489 Mich 99, 106; 802 NW2d 1 (2011) (quotation marks and citation omitted). “[P]ossession concurrent with that of the true owner” is never “exclusive.” *Jonkers v Summit Twp*, 278 Mich App 263, 274; 747 NW2d 901 (2008) (quotation marks and citation omitted).

In regard to acquiescence, it is well established that parties may acquiesce to a new property boundary line. *Walters v Snyder*, 239 Mich App 453, 456-457; 608 NW2d 97 (2000). The three theories of acquiescence are: (1) acquiescence for the statutory period of 15 years, (2) acquiescence following a dispute and agreement, and (3) acquiescence arising from intention to deed to a marked boundary. *Id.* at 457. Unlike adverse possession, a claim of acquiescence does not require that possession of land be hostile or without permission. *Id.* at 456. Acquiescence may be accomplished where there is “a boundary line long treated and acquiesced in as the true line[.]” *Id.* at 457-458; *Waisanen v Township of Superior*, \_\_Mich App\_\_; \_\_NW2d\_\_ (Docket No. 311200, issued June 24, 2014) (slip op at 7) (quotation marks and citation omitted).

In the instant case, plaintiff supported her claims with her affidavit and that of her son, Kurt. In plaintiff’s affidavit, she conclusory lists her compliance with the elements of adverse possession, stating: “Since 1975, my now deceased husband and I openly possessed, maintained and used the land east of the sprinkler heads exclusively and hostilely, under a claim of right and claim of ownership by adverse possession. This included mowing the grass, watering, fertilizing, raking, etc. of the land, by myself and my family members.” Her son likewise averred that he “cut the grass and performed maintenance on the grass west of our home up to the sprinkler heads.”

In regard to her acquiescence claim, plaintiff attested: “In 1975, I and my now deceased husband installed lawn sprinklers to the west of my home. At that time, the owners of the lot and home to the west of my home . . . were Mr. and Mrs. Peuterbaugh, who agreed that the boundary line between our lots was the location of the sprinkler heads.” Her son averred that “[i]t appeared that the neighbors and my parents considered the sprinkler heads to be the boundary line[.]”<sup>2</sup> Now on appeal, plaintiff asserts a theory of acquiescence for the statutory period of 15 years, apparently abandoning her claim of an express agreement.

However, the conclusory allegations in these affidavits do not address nor respond to evidence that the defendants produced. See *Quinto v Cross & Peters Co*, 451 Mich 358, 371-372; 547 NW2d 314 (1996) (“mere conclusory allegations” that are “devoid of detail” are insufficient to create a genuine issue of material fact). In his affidavit, defendant Steven Benefield claimed that the disputed area “includes three sprinkler heads linked to my sprinkler system, which existed well before I purchased the Subject Property.” Defendants also produced a hand drawing depicting the disputed area, which illustrates that defendants’ sprinkler heads lie in the area. Nancy Peuterbaugh averred that the drawing was an accurate reflection of the boundary dispute.

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<sup>2</sup> He did not provide any further details regarding what sprinkler heads—plaintiff’s or defendants’—he was referencing.

Neither affidavit plaintiff submitted explains, discusses, or disputes the fact that defendants' active sprinkler heads also lie in the contested area. Plaintiff did not produce any other evidence—such as deposition testimony, additional detailed affidavits, or her own map depicting the sprinkler heads—to contradict defendants' evidence that their sprinkler heads lie in the disputed area.<sup>3</sup> Thus, it is uncontested that the use of the disputed portion of land was shared, not exclusive. Plaintiff likewise fails to offer evidence explaining how her theory of acquiescence comports with defendants' active sprinkler heads in the disputed area.

In light of this uncontroverted evidence, plaintiff's claim of adverse possession and acquiescence fails. See *Jonkers*, 278 Mich App at 274; *Walters*, 239 Mich App at 456-457.<sup>4</sup>

### III. CONCLUSION

The trial court properly granted summary disposition to defendants. We affirm.

/s/ Michael J. Riordan

/s/ Pat M. Donofrio

/s/ Mark T. Boonstra

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<sup>3</sup> While plaintiff attached a map to her complaint and response to the motion for summary disposition, it does not depict the relative positions of both parties' sprinkler heads.

<sup>4</sup> Although plaintiff challenges the trial court's statute of limitations analysis, because she failed to demonstrate a claim of ownership to the disputed land, we decline to address this issue as it has been rendered moot. Further, because plaintiff did not create a genuine issue of material fact regarding her ownership of the disputed portion of land, her claims of trespass, nuisance, injunctive relief, and quiet title were properly dismissed.